

UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

D-042

**Prosecution Response to Defense Motion for  
Additional Continuance**

20 June 2008

1. **Timeliness:** This response is timely filed and the Defense request for expedited brief filed 20 June 08 in this matter is unnecessary.
2. **Relief Sought:** Defense motion should be denied.
3. **Overview:** The government respectfully opposes any continuance in the current trial schedule in the captioned case. All outstanding issues are resolved or will be resolved prior to trial. Moreover, further continuance is not justified due to the Supreme Court's recent decision in *Boumediene v. Bush*, 553 U.S. \_\_\_\_ (2008).
4. **Burden of Proof:** The defense bears the burden of persuasion.
5. **Law and Argument:** A continuance of the final phases of this trial is unnecessary.

**Trial issues:** All discovery issues raised by the Defense are either completed or will be completed well before trial. The requested mental health determination under MCRE 706 is scheduled to be completed in accordance with the most recent court timeline.

**Boumediene:** The narrow holding of *Boumediene* is made plain in the Court's emphasis that:

"Our decision today holds only that the petitioners before us are entitled to seek the writ; that the DTA review procedures are an inadequate substitute for habeas corpus; and that the petitioners in these cases need not exhaust the review procedures in the Court of Appeals before proceeding with their habeas actions in the District Court. The only law we identify as unconstitutional is MCA §7, 28 U. S. C. A. §2241(e) (Supp. 2007)."

*Boumediene v. Bush*, 553 U.S. \_\_\_\_, slip op. at 66 (2008).

This narrow holding in a case concerning the Suspension Clause—something not at issue in the present case—does not necessitate any need for a further continuance of the scheduled trial date. Moreover, the detainees in *Boumediene* stood in a very different position from Hamdan, in that they had not yet been charged with a crime. *Cf. Boumediene*, slip op. at 37 (contrasting the defendants in *Eisentrager*, who had been charged and convicted of crimes, with the *Boumediene* detainees, who had not been charged with crimes). Because Hamdan has been charged with war crimes—and is about to be brought to trial and receive a full and fair adversary process—*Boumediene* is of little relevance. *See, e.g., id.* at 58 (distinguishing military commission procedures that "ha[ve] an adversarial structure that [wa]s lacking" in *Boumediene*).

It is time to proceed to the guilt phase of the trial. The public, the government, and the accused all deserve that this case—in which charges were referred for trial over a year ago—finally move forward to trial. If the court takes anything from the *Boumediene* decision, it should recognize the importance in preventing any further delay in the matter presently before it and deny the defense request. Cf. *Boumediene*, slip op. at 66 (emphasizing the unacceptability of further delay).

This Court's 16 May 2008 Ruling, granting a continuance until after the *Boumediene* decision, already provided for a trial date that, as it turns out, comes more than five weeks after the decision was released. This date provides the parties adequate time to address any new issues identified in light of the decision. To the extent this court will allow further briefing, it should set a due date in the very near future for any such motions (leaving the trial date undisturbed).

Lastly, the government respectfully requests that this court adequately consider the impact the most recent continuance has had—and any future continuances will have—on the witnesses in this case. In its 16 May Ruling, this court stated that “[t]he Government may easily re-schedule its witnesses and their travel.” With respect, we disagree with the court's statement and we must ask the court to consider the very real impact the delays in this case have on the witnesses. The government intends to bring approximately twenty-two witnesses, some from outside the United States, to Guantanamo Bay, Cuba for a trial that may last up to three weeks. Most of these witnesses serve our nation and perform important roles in support of the national security mission of our country. Scheduling and re-scheduling the time required for this trial (which is obviously a priority to these witnesses) necessarily requires witnesses to forego or reassign other important work that may come to overlap with the scheduled trial date. Of course, a moving trial date is the enemy of such witnesses, and further delay will only compound the problem.

#### Conclusion

The defense claim that it needs more than two full months to deal with the Supreme Court's opinion in *Boumediene* is meritless. This court should now put an end to the delay and proceed to trial.

Justice must proceed—hard work is demanded by all participants. This trial must not be further continued beyond 21 July 2008.

**6. Request for Oral Argument:** The Defense waived its request for oral argument in its original filing and its reply in its Request for special relief filed today, 20 June 2008. The Prosecution similarly waives any argument and believes the motion can be decided expeditiously as submitted.

**7. Request for Witnesses:** No witnesses are necessary for this motion.

**8. Conference with Opposing Counsel:** N/A.

**9. Attachments:** N/A.

Respectfully submitted,

/s/

Timothy D. Stone  
LCDR, JAGC, USN

/s/

Mr. John Murphy  
Department of Justice

/s/

Mr. Clayton Trivett  
Department of Defense